

JUDGE KAPLAN 13 CV 4980  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KATHY ECHEVARIA,

Plaintiff,

-against-

DIVERSIFIED CONSULTANTS, INC.,

Defendant(s),

Civil Action No.

JUL 17 2013

COMPLAINT

U.S.D.C. S.D. N.Y.  
CASHIER

DEMAND FOR JURY TRIAL

Plaintiff KATHY ECHEVARIA ("Plaintiff"), by and through her attorneys, M. Harvey Rephen & Associates, P.C.. as and for her Complaint against the Defendant DIVERSIFIED CONSULTANTS, INC., (hereinafter referred to as "Defendant(s)"), respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA").

PARTIES

2. Plaintiff KATHY ECHEVVARIA is a resident of the State of New York, residing at 1422 West 109th Street, Apartment 4-E, New York, New York 10025.

3. Defendant DIVERSIFIED CONSULTANTS, INC. is a corporation engaged in the business of debt collection and maintains an office at 10550 Deerwood Park Boulevard, Suite 309, Jacksonville, Florida 32256.

4. Plaintiff is a "consumer" as defined by the FDCPA, 15 USC § 1692 a(3).
5. The Defendant is a "debt collector" as the phrase is defined and used in the FDCPA under 15 USC §1692a (6).

**JURISDICTION AND VENUE**

6. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as well as 15 USC §1692 et seq. and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1337(a).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

**FACTUAL ALLEGATIONS**

8. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "7" herein with the same force and effect as if the same were set forth at length herein.

9. Upon information and belief, Defendant, on behalf of a third-party or itself as purchaser of the debt, began efforts to collect an alleged consumer debt from Plaintiff.

10. Upon information and belief, and better known to the Defendant, the Defendant began its collection efforts and campaign of communications with the Plaintiff, by placing a telephone call to the Plaintiff at her mobile telephone number 917 226 1803, seeking an individual named "Magda Maleno" on or about March, 2011.

11. Plaintiff informed Defendant that she did not know the individual sought and requested that Defendant cease and desist from any future communications.

12. Despite receiving this information, Defendant persisted in placing

autodialer, computerized pre-recorded calls to the Plaintiff's mobile telephone for two more years.

**FIRST CAUSE OF ACTION**  
*(Violations of the FDCPA and TCPA)*

13. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "12" herein with the same force and effect as if the same were set forth at length herein.

14. According to the Telephone Consumer Protection Act 47 USC §227(b)(A)(iii) any person within the United States or any person outside the United States if the recipient is within the United States is prohibited from using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service or any service for which the called party is charged for the call.

15. Defendant willfully violated TCPA 47 USC §227(b)(A)(iii) by waging a campaign of computer generated unauthorized autodialer telephone calls to Plaintiff's mobile telephone several hundred times over the last two years despite being informed that the individual they were calling was not at that telephone number.

16. 15 USC §1692 d – preface prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt.

17. Defendant violated 15 USC §1692 d – preface by harassing Plaintiff with multiple telephone calls daily to her mobile telephone amounting to hundreds of calls from approximately March, 2011 through 2013 all in error seeking a person unknown to Plaintiff named "Magda Maleno."

18. As a result of Defendant's violations of the TCPA, Plaintiff has been damaged and is entitled to damages in accordance with the TCPA.

19. Defendant is liable to Plaintiff for damages sustained as a result of their failure to comply with §1692 et seq. of Title 15 of the United States Code (the FDCPA).

**DEMAND FOR TRIAL BY JURY**

20. Plaintiff hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment from the Defendant, as follows:

- A. Plaintiff requests trebled damages to be awarded to the Plaintiff in accordance with the TCPA, for each of the Defendant's several hundred willful or knowing violations of the TCPA, for additional damages of \$300,000.
- B. For actual damages provided and pursuant to 15 USC §1692k(a)(1);
- C. For statutory damages provided and pursuant to 15 USC §1692k(2)(A);
- D. For statutory damages provided and pursuant to 15 USC §1692k(2)(B);
- E. For attorneys' fees and costs provided and pursuant to 15 USC §1692k(a)(3);
- F. A declaration that the Defendant's practices violated the FDCPA;
- G. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York  
July 1, 2013

Respectfully submitted,

By:   
M. Harvey Rephen, (MR3384), Esq.  
M. HARVEY REPHEN & ASSOCIATES, P.C.  
708 Third Avenue, 6<sup>th</sup> Floor  
New York, New York 10017  
Phone: (212) 796-0930  
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*Attorney for the Plaintiff KATHY ECHEVVARIA*

To: DIVERSIFIED CONSULTANTS, INC.  
10550 Deerwood Park  
Jacksonville, Florida 32256  
*(Via Prescribed Service)*

Clerk,  
United States District Court, Southern District of New York  
*(For Filing Purposes)*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CASE NO.:

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COMPLAINT

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